IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 268 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant

Versus

KOLI SHAMJI MERU & 2 - Respondents

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Appearance :
MR. K.P. RAVAL, LD. APP for Appellant State of Gujarat.
MR. M.J. BUDHBHATTI, Learned Advocate for Respondents :
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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA
and
HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 14/11/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1.By means of filing instant appeal under section 378 of

the Code of Criminal Procedure ['the Code'], the appellant – State of Gujarat has called in question the legality and propriety of the judgment & order of acquittal dated December 12, 1985 rendered in Sessions Cases No. 82 of 1984 by the learned Sessions Judge, Bhavnagar, acquitting the respondents ('accused' for short) of the offences punishable under section 302, 337 r/w 114 of Indian Penal Code ('IPC' for short).

2. The charges against the accused were that on April 06, 1984 at 10.00 p.m., on the plot of Narsi Makan at Bhavnagar the accused have pelted stones so negligently and with rashness which hit on the head of deceased Narsi Makan with the knowledge that by the said act deceased Narsi would die and also cause injury to Vithal Talsi and thereby they have committed offences under section 302, 337 and 114 of I.P.C.

3. Facts of the case have been detailed in the judgment of the learned Sessions Judge, therefore, it is not necessary for us to repeat the same in verbatim and in detail in this judgment. However, the basic facts which are necessary to discuss in this appeal are as under:

3.1 A/1 was residing near the house of deceased Narsi Makan in Khedutvas at Bhavnagar. A/1 was constructing a new house and its debris were lying on the road which was an obstruction to the traffic. On the day of incident at about 10.30 p.m., when deceased Narsi Makan was returning home with his bullock cart at that time he had a talk with the A/1 about the obstruction of traffic. Therefore A/1 pelted stone at the deceased which hit on the head of deceased Narsi Makan, as a result thereof deceased fell down, and during the course of treatment he succumbed to the injuries. In the said incident injured witness Vithal also received injuries on his head. Complaint for the aforesaid incident was filed by Vithal Talsi who is the injured eye witness with Bhavnagar City 'B' Division Police Station.

3.2 Pursuant to the complaint and registration of offence against the accused the investigating machinery was put into motion and during the course of investigation, Investigating Officer (I.O.) had recorded statements of the witnesses, drawn panchnama and after getting report of autopsy of deceased Narsi Makan and injured Vithal Talsi, as according to

Investigating Officer, evidence was divulged against the accused, they were charge sheeted in the court of learned JMFC, Bhavnagar who committed the case to the Court of Sessions, Bhavnagar. At the time of framing of the charge, original accused no.3 Dama Maru died, therefore, case against original accused no.3 was abated for commission of offence under section 302, 337 r/w 114 I.P. Code. The rest of the accused pleaded not guilty to the charge and claimed to be tried and therefore they were tried by learned Sessions Judge, Bhavnagar in Sessions Case No. 82 of 1984.

3.3 In order to bring home the charge levelled against the accused, prosecution has examined in all 6 witnesses and placed reliance on their oral testimony as well as produced several documents on which heavy reliance was placed by the prosecution.

3.4 At the end of the trial, further statement of the accused were recorded under section 313 of the Code wherein also they pleaded their innocence and stated that they have not committed any offence. However they did not lead any evidence nor they examine any witness in their defence.

3.5 On appreciation, evaluation and analysis of the evidence adduced by the prosecution learned Sessions Judge held that, there was no clinging evidence to the effect that the accused were involved in the crime and they have committed the offence and, therefore, a doubt was raised upon the prosecution case and thereby the Trial Court reached the conclusion that the accused were entitled to have the benefit of doubt. On the basis of the aforesaid findings learned Sessions Judge acquitted the accused of the offences with which they were charged by the judgment & order of acquittal dated December 12, 1985, which is now on anvil of scrutiny in this appeal filed by the appellant – State of Gujarat.

4. Mr. K.P. Raval learned APP contended that the judgment & order acquitting the accused is bad in law and is not based on proper appreciation of evidence adduced by the prosecution witnesses. According to him, learned Sessions Judge has misread the evidence. According to him, totality of the evidence unerringly leads to the conclusion that the quarrel took place between the accused and deceased for the debris which were lying on

the road which caused obstacle to the traffic and on that an altercation took place and A/1 pelted stone on the head of the deceased, as a result of which deceased received serious head injury and ultimately he succumbed to the same. Therefore, according to the learned APP, there was an intention on the part of A/1 to kill the deceased. Besides this, accused also injured eye witness Vithal Talsi who has lodged the complaint and therefore, there is no reason to disbelieve his version stated on oath before the learned Sessions Judge. Notwithstanding the above facts, learned Sessions Judge has disbelieved the evidence of injured eye witness Vithal Talsi. On the aforesaid premises learned APP urged that the judgment & order acquitting the accused is vulnerable as it is not based on sound principles of Criminal Jurisprudence, therefore, same deserves to be quashed and set aside by recording conviction and the accused may be sentenced in accordance with law by allowing this appeal.

5. In answer to this, Mr. Buddhbhatti, learned advocate of the accused, has supported the judgment & order of acquittal recorded by learned Sessions Judge

throughout. According to him, there is no evidence worth the name to consider as there are two versions coming from the prosecution side. According to him, the evidence of Godiben, wife of the deceased, unequivocally suggests that the deceased died because of either hitting of stone pelted by Damabhai or by blow of pipe by Damabhai, who was ori. accused no.3, and who died during the course of trial and before framing of the charge. According to him the complainant Vithal Talsi who is an injured, filed false complaint involving all the accused, therefore no reliance can be placed upon the oral testimony of said injured eye witness Vithal Talsi. Accordingly to him, learned Sessions Judge has rightly recorded the acquittal which does not require interference of this Court in view of the settled principle of law in the case of acquittal appeal. He therefore urged that the appeal may be dismissed as it lacks merits.

6. We have considered submissions advanced by Mr. K.P. Raval, learned APP for the appellant – State of Gujarat and Mr. Buddhbhatti, learned advocate of the accused. We have also perused the impugned judgment & order, record & proceedings of the case and also scrutnised

the evidence minutely.

7. So far as the homicidal death of the deceased Narsi Makan is concerned, there is no dispute that he had died because of the injury received on the vital part of the anatomy i.e. Head. In this connection prosecution has examined P.W-1 Dr. Rameshchandra Ravisankar Jani at exhibit-15 and P.W-2 Dr. Alpaben Ajitbhai Shah at exhibit-19. Dr. Rameshchandra Jani had examined the deceased as well as injured Vithal Talsi. He has issued injury certificate wherein injury received by deceased as well as injured eye witness has been mentioned, which are on record at Exh. 16 and 17. Dr. Alpaben Ajitbhai Shah has performed the autopsy on the dead body of deceased Narsi Makan, which is produced at Exh. 20.

8. Now the question that is required to be considered by this Court is, who is the author of the injury caused to deceased Narsi Maken and injured Vithal Talsi. In this connection to prove culpability of the accused, prosecution has mainly relied upon the evidence of two witnesses i.e. P.W. No.4 Vithal Talsi at exhibit-23 and P.W. No.5 Godiben Dayabhai at

exhibit-28. A Perusal of evidence of Vithal Talsi shows that alleged incident had taken place at 8.00 O' clock in his presence. He has testified that A/1 has pelted stone on the head of deceased Narsi. Thereafter A/2 also pelted stone on the deceased as a result thereof deceased fell down. Thereafter A/3 and A/4 also came there. A/4 has pelted stone on him as a result thereof he also fell down and thereafter the other people came there and the accused ran away. He has also testified that he has filed the complaint before the police station which is at exhibit 12/9. It may be noted that he has reiterated similar version before the Court in his oral testimony which has been narrated in the complaint at exhibit-12/9.

9. Now, so far as the evidence of Godiben at exh. 28 is concerned, she has, inter alia, testified that the alleged incident had taken place at 8.00 p.m. There were debris in the chowk, therefore deceased husband asked A/1 to remove that debris. She was in her house and when she came outside the house she saw her husband lying and the people were talking that Damabhai i.e., ori. accused no.3 has either pelted stone or inflicted pipe blow on the deceased. She further testified that

thereafter i.e. after two hours her son Vithal came, who inquired as to what had happened, so she narrated the incidence to Vithal. Thereupon Vithal went outside to inquire how the incidence had taken place. At that time he also received injuries. During the course of cross examination she has admitted that there were stone pelting between her family members and Damabhai and his family against each other and at that time Vithal was not present. She reiterated that her son Vithal came at 10.00 O' clock, and at that time also both the parties continued stone pelting against each other.

10. In view of the aforesaid contradictory evidence, according to us, there are two versions coming forth from prosecution side. If we accept the evidence of Godiben, the alleged incident taking place in presence of Vithalbhai is doubtful. Therefore, according to us, learned Sessions Judge has very rightly observed that a doubt is raised upon the prosecution case.

11. In view of the unsatisfactory evidence led by the prosecution, we are of the considered opinion that no illegality is committed by the learned Sessions Judge

in acquitting the accused of the offences with which they were charged. We are in complete agreement with the findings, ultimate conclusion and resultant order of acquittal recorded by the learned Sessions Judge, as in our view, no other conclusion is possible except the one reached by the learned Sessions Judge.

12. It is a cardinal principle of Criminal Jurisprudence that in an acquittal appeal if other view is possible then also appellate Court can not substitute its own view by reversing the acquittal into conviction, unless the findings of the trial Court are so perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. [See Ramesh Babulal Doshi V. State of Gujarat (1996) 9 SCC 225]. In the instant case, the learned APP has not been able to point out to us as to how the findings recorded by the learned Trial Court are perverse, contrary to material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable.

13. In the case of RAM KUMAR V. STATE OF HARYANA, reported in AIR 1995 SC 1995 SC 280, Supreme Court has

held as under:

> " The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C., are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal. "

14. It may be noted that this is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more

particularly, when the evidence has not inspired confidence of the learned Judge. As this Court is in general agreement with the view expressed by the learned Judge, it is not necessary for this Court either to reiterate the evidence of the prosecution witnesses or to restate reasons given by the learned Judge for acquittal and in our view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the present case for not interfering with the judgment of the learned Judge and this is so, in view of the decisions rendered by the Hon'ble Supreme Court in the case of GIRJA NANDINI DEVI AND OTHERS V. BIJENDRA NARAIN CHAUDHARI, AIR 1967 SC 1124 and STTE OF KARNATAKA V. HEMA REDDY AND ANOTHER, AIR 1981 SC 1417.

15. On overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the accused. Suffice it to say that the learned Trial Judge has given cogent and convincing reasons for acquitting the respondents/accused and the learned A.P.P. has failed to dislodge the reasons given by the learned Trial Judge and convince this Court to take a

view contrary to the one taken by the learned Judge.

16. Seen in the above context, we do not find any valid reason or justifiable ground to interfere with the impugned judgment and order acquitting the respondents/accused of the offences with which they were charged. Hence,the appeal deserves to be dismissed.

17. For the foregoing reasons, the appeal fails and accordingly it is dismissed. The accused are on bail. Therefore, their bail bonds shall stand cancelled and sureties are discharged.

[A.M. KAPADIA, J]

[S.R. BRAHMBHATT, J]

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